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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/636,286	08/10/2000	Robert Arthur Giddings	RD-27,791	7072

7590

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EXAMINER

HOFFMANN, JOHN M

ART UNIT

PAPER NUMBER

1731

10

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/636,286

Applicant(s)

GIDDINGS ET AL.

Examiner

John Hoffmann

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Election/Restrictions

Applicant further traverses the restriction requirement. The traversal is on the ground(s) that the previous traversal actually does show that there is no serious burden and that it is more than an allegation. A review of the traversal does not seem to bear this out. The traversal states: "The subject matter of all the claims is sufficiently related that a search of any one Group encompasses a search for the subject matter of the other group." No rationale or evidence is supplied to support this allegation - it is not a showing of any lack of burden or that the prima facie showing made by the Office contained any error.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19 and 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Blankenship 5059229.

Figure 4 shows the feeding of the SiO₂ material (41) into a furnace. Col. 5, lines 26 and 34 teach the carrier gas and the oxidizing gas, respectively. 30 is the wall

of refractory material - 32 is the protective lining. 46 is the elongated article. 33 is the melting zone with the fused (molten) material. The fiber 46 is clearly being drawn.

As to claims 1 and 3 - as indicated previously: the group language of the claims is such that the group of lining materials is not closed - thus it is open to having additional materials - such as the zirconia of Blankenship.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietzsch 4078909

Figure 1, col. 2, line 11 disclose the invention. But not the lining.

As to the gas that is above the furnace, the air around the Dietzsch apparatus is comprised of nitrogen (a carrier gas) and oxygen (an oxidizing gas).

As to the lining: see col. 7, lines 22-25 which states the material coming in contact with the molten material should consist "of such an anti-corrosion metal, or else be coated with a corresponding material". It would have been obvious to one of ordinary skill that the use of "such" and "corresponding" refers back to one of the

previously mentioned metals and that this includes the metals of col. 7, lines 17-21.

One of ordinary skill recognizes that platinum is a "precious metal".

Alternatively or additionally, the list of metals is not in the Jepson format (contrary to comments in the amendment) because it is not similar to "a member of the group consisting of..." rather the present broad limitation needs to be interpreted as "a member of the group CONPRISING..." which is open to additional members such as steel.

As to claim 4, the ambient atmosphere contains varying amounts of water vapor.

Claims 5-6 are clearly met.

Claim 7: a tube is nothing more than a hollow rod.

Claims 1 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's prior art teaching in view of Palmquist 4430109.

Applicant admits that the drawing of molten glass to form glass articles is well known. See the Background of the Invention section of the present application. Palmquist discloses a superior furnace that has "enhanced thermal efficiency" (col. 1, line 15). It would have been obvious to create the molten glass of the prior art method by using the Palmquist furnace for the advantages that Palmquist discloses. Relevant portions of Palmquist include figure 1 and col. 4, lines 46 and 50, and col. 5, line 8

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

It is argued that claim 1 is of a proper Markush group. The group of claim one is not of any of the Markush formats that are specified in MPEP 2173.05(h). As indicated therein a group that is open to other members is an "improper" Markush group. Ex parte Dotter, 12 USPQ 382 (Bd. App. 1931). There is no evidence/rationale given to support the position that the present claim has a proper Markush group. There is no basis for interpreting it as a Markush group.

It is argued that Dietzsch does not have a step of fusing as claimed. It is clear that the material is fused in section 2 of Dietzsch.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

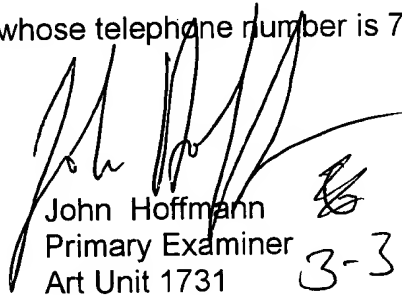
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.


John Hoffmann
Primary Examiner
Art Unit 1731 3-31-03

jmh
March 31, 2003